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No. 86 1401

In The
Supreme Court of the United States
October Term, 1986

BOBBY GAY BEAZLEY,

Petitioner,

vs.

STATE BAR OF GEORGIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

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QUESTION PRESENTED

I

After one is admitted to the practice of law in a State of the Union, does his right to practice law become a valuable property right protected by the Fourteenth Amendment of the United States Constitution and of which he cannot be deprived absent due process and statutory authority?

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No. .....

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BOBBY GAY BEAZLEY,

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vs.

STATE BAR OF GEORGIA,

Respondent.

—o—

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

—o—

The petitioner respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Georgia entered on November 25, 1986 and the subsequent denial of a timely motion for rehearing on December 18, 1986.

—o—

OPINIONS BELOW

The opinion of the Supreme Court of Georgia entered on November 25, 1986 is included as Appendix C to the instant petition. The decision of the Supreme Court of Georgia denying the petition for rehearing was supposedly entered on without a writing and the available notification is included as Appendix E.

JURISDICTION

The complained about decision was entered on November 25, 1986 and the motion for rehearing was denied on December 18, 1986. The jurisdiction of the court is invoked under 28 U.S.C. § 1254(1) and petitioners petition is timely.

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. The United States Constitution, Section I, Fourteenth Amendment:

Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, and property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

STATEMENT OF THE CASE

Petitioner was admitted to the practice of law in the State of Georgia in May of 1969. In 1978, petitioner came on information of utmost importance to the judiciary and government as a whole. Employees of the State Bar of Georgia, which is an arm of the Georgia Supreme Court, declined to examine or investigate petitioner's findings on the ground said office was absent authority to do so (T-14). Petitioner filed 34 page report with said association office to lure an investigation. The report was signed by a notary to lure investigation; however, petitioner was not sworn as to the facts contained in the report and in fact a third party signed the report using petitioner's name. At that time and at present, State Bar Rule 1-202 provided for active and inactive members of the Bar and no method of voluntary resignation existed as is the rule in most states. Nevertheless, as a further ploy to obtain inquiry from the Association office and some sort of review, it was stated in the report that petitioner was resigning from the Bar. Petitioner had no intent to resign his membership in the Bar and assumed the resignation language might give the State Bar jurisdiction to intervene with a special master proceeding which was customary in most states when one presumably wanted to depart the State Bar. The report was mailed on June 22, 1978. On June 23, 1978, petitioner telephoned the Bar office and spoke with an employee acquaintance named Bob Davis and informed Mr. Davis that the report was an effort to obtain an investigation. Mr. Davis related that it was too late and discussions had already commenced with the Superior Court of Richmond County, Georgia which was petitioner's home county. Petitioner assumed that the first phase of an investigative ef-

fort was underway. Later, petitioner discovered that employees of the Bar office, acting without any legal authority whatever, removed petitioner's name from the State Bar membership rolls on June 23, 1978. In Georgia, one has to be a member of the State Bar of Georgia Association in order to practice law. Thereafter, proposing to represent appellee in a legal proceeding, said employees prepared a petition for voluntary resignation from the association and forwarded same to a Superior Court Judge in Richmond County, Georgia (T-24), (R-3-4). The State Bar Association was not a party to this petition (T-10), (T-14), (T-24), (T-25), T-28), (p. 2 of application for discretionary appeal). No process was issued and attached by clerk and no rule nisi or any other form of notice was provided to appellee of the existence of the employees petition prior to June 26, 1978 when the Honorable John F. Hardin stated that he did not know what it was that he signed, referring to the removal order. A copy of said order is included as Appendix A to the instant petition.

Appellee, without filing a notice of appeal, filed illegal extraordinary appeal with Supreme Court the intent of which was to notice the court of the aforesaid described events (T1-15). This nullity was denied (R-110).

Appellee filed a petition in equity and complaint for damages against State Bar Association in the Fulton Superior Court upon the advice of counsel (T-17). Presiding Judge stated that he could not entertain action as it was his opinion that the denial by the Supreme Court of Georgia of appellee's earlier extraordinary appeal constituted res judicata of the issues. *See p. 19 of transcript of single in chambers hearing held, which was read by Judge Ridgeway* (T-1) (R-30).

Appellee filed action in the United States District Court, Southern District of Georgia, Brunswick Division, under 42 U.S.C. § 1983 (T-21). Presiding Judge erroneously concluded that the Fulton Superior Court had entered a decision on all merits that would support a 42 U.S.C. § 1983 claim and dismissed appellee's action (T-21) (R-130-139) (R-135).

Appellee filed mandamus petition with Supreme Court of Georgia seeking to have employees of associations Atlanta office restore his name to active membership (T-6). Court declined to exercise jurisdiction but did so without prejudice to the appellee's right to seek relief by way of a motion to set aside the complained about order of removal in the appropriate Superior Court in light of *Carpenter v. State*, 250 Ga. 177, 293 S.E. 2d 16 (1982). (Action No. 41772 in Supreme Court) (T-6).

Appellee filed motion to set aside subject order of removal in the Superior Court of Richmond County, Georgia (T-1-42) (R-6). Honorable Thomas W. Ridgeway, Chief Judge Superior Courts, Alcovy Judicial Circuit was designated to hear motion (T-33). Motion was heard on January 30, 1986. Although State Bar Association was not a party to the proceedings, presiding Judge permitted two employees of association's Atlanta office to attend in order to acquire certain documents from them that had not been included in the record transmitted to said Judge by the Clerk (R-160). Order was entered on May 28, 1986 setting aside complained about order of removal and directing appellee

to pay dues owing (R-150). Appellee immediately tendered dues for whole year by cashier's check to Mr. Allan A. Kirwan, Executive Director of said association. Copy of said order is included as Appendix B to the instant petition.

Although not a party to petitioners motion to set aside, the State Bar of Georgia Association appealed Judge Thomas W. Ridgeways order restoring petitioner to active status to the Supreme Court of Georgia. After hearing arguments at Emory University, the Supreme Court of Georgia entered a decision reversing Judge Ridgeway's decision. A copy of said order is included as Appendix C to the instant petition.

That petitioner timely filed a motion for rehearing the text of which clearly disclosed that the Supreme Court of Georgia had misapplied the doctrine res judicata and over-looked the Georgia case of *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. 2d 695 (1986) which held that movant's only remedy ever under Georgia law was to file a motion to set aside in the County that originally entered the illegal order removing petitioner as a member of the State Bar of Georgia. A copy of said motion is included as Appendix D to the instant petition.

On December 18, 1986, the Supreme Court denied petitioner's motion for rehearing. See copy of note to petitioner included as Appendix E to the instant petition.

———o———

REASONS FOR GRANTING WRIT

I. THE SUPREME COURT OF GEORGIA INCORRECTLY CONCLUDED THAT THE FULTON SUPERIOR COURT AND THE U.S. DISTRICT COURT HAD JURISDICTION TO ENTERTAIN PETITIONER'S ACTION AND FURTHER INCORRECTLY CONCLUDED THAT THE FULTON SUPERIOR COURT OR THE U.S. DISTRICT COURT HEARD THE MERITS OF THE CASE SUBJUDICE: AFTER WHICH, EITHER COULD HAVE DECIDED PETITIONER RESIGNED FROM THE BAR WHEN THERE IS NO PROVISION IN GEORGIA LAW FOR A RESIGNATION ABSENT DISCIPLINARY PROCEEDINGS.

Conspiracy may be shown by acts and conduct as well as by direct proof or express agreement. It may be shown by circumstantial evidence. It may be established by inference as a deduction from conduct which discloses a common design. The conspirator cannot remove the question of conspiracy from the jury simply by swearing that he did not conspire. See *John D. Stephens, Inc. v. Gwinett County, et al.* 175 Ga. App. 379, 333 S.E. 2d 396 (1985).

It is axiomatic and needs no citation of authority that every American is entitled to his day in court and a right to be heard before his interest, his rights, property and otherwise are affected by judicial decision.

In Georgia, after once admitted, the right to practice law is to be considered a property right, of which one is not to be deprived without notice and an opportunity to be heard and there can be no doubt that a court is without authority to suspend an attorney sua sponte without notice and hearing. See *James v. State of Georgia,* 61 Ga. App. 863.

It is undisputed in the record below that petitioner was not afforded notice and an opportunity to be heard prior to being removed from the active list of practicing attorneys and as a member of the State Bar of Georgia; also, it is irrefutable that the Richmond County Superior Court lacked jurisdiction to remove petitioner. See *Carpenter v. State,* 250 Ga. 177, 293 S.E. 2d 16 (1982); *Matter of Ben S. Atkins,* 253 Ga. 319, 320 S.E. 2d 147; *Coker v. Coker,* 251 Ga. 542, 307 S.E. 2d 500 (1984); *Barland Company v. Barton County Board of Tax Assessors,* 172 Ga. App. 61, 322 S.E. 2d 216 (1984).

It is also established law in Georgia that the only remedy or cause of action available to petitioner to challenge the illegal and wrongful removal order was in the court of rendition. See *C & S Nat'l Bank v. Burden,* 145 Ga. App. 402, 244 S.E. 2d 244 (1978); *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. 2d 695 (1986).

Assuming, but not deciding, and for argument and for reason for granting of the writ, the State contends that there is no method of reinstatement for petitioner even though numerous disbarred attorneys from Augusta and elsewhere in Georgia have been reinstated pursuant to specific provision provided for their class of persons.

Georgia law clearly states that a judgment void for lack of jurisdiction over the person and subject matter is a nullity. See *O.C.G.A.* § *9-12-16.*

There are many other arguments available; however, in respect of brevity and expense, petitioner respectfully shows that a writ should issue in this instance because numerous persons some known, some unknown, have entered

into a conspiracy to establish a precedent in Georgia to the effect that should a practicing attorney, who is under oath to uphold and defend the United States Constitution and the Georgia Constitution attempts to discuss clear evidence of an impending danger to the American legal system as a whole, he can be removed from practice at the whim of the State with all constitutional rights and applicable jurisdictional and procedural law being ignored. The eight year roller coaster ride that petitioner has thus far been subjected to in various courts without a hearing ever being conducted on the merits of the situation not only premises the complained about conspiracy but proposes a dangerous precedent that will strike fear and terror into every practicing attorney in Georgia. The situation has already had an adverse affect in that while most attorneys agree with petitioner's position in private, they decline involvement for fear of reprisal. It is submitted that issuance of a writ may well correct this situation. The writ should further issue because of the courage of Superior Court Judge Thomas Ridgeway who on May 28, 1986 issued a lengthy order correctly interpreting the law and restoring petitioner to the active practice of the law. See Appendix B attached to the instant petition.

It might be further observed that the original petition for removal was filed directly with a Superior Court Judge in Richmond County, Georgia and not with the clerk and no form of notice was given petitioner until three days after the removal order was signed and the two filed with the clerk. See removal order as Appendix A to the instant petition.

———o———

CONCLUSION

Absent statutory provision or applicable judicial decision, the State of Georgia could not remove petitioner as a practicing attorney in disregard of all due process safeguards available to him; therefore, petitioner prays that a writ of certiorari issue to review the decisions of the Supreme Court of Georgia copies of which are included as Appendix C and E to the instant petition.

Respectfully submitted,

Bobby Gay Beazley, Pro Se

APPENDIX A

IN THE SUPERIOR COURT OF
RICHMOND COUNTY
STATE OF GEORGIA

DISCIPLINARY PROCEEDINGS
FROM THE
STATE BAR OF GEORGIA

IN THE MATTER OF:)	CIVIL ACTION
BOBBY G. BEAZLEY)	FILE NO. .....

ORDER

The foregoing Petition of the State Bar of Georgia read and considered.

The Respondent, BOBBY G. BEAZLEY, having on June 22, 1978, formally and under oath, resigned from the legal profession and the practice of law, and such resignation having been accepted by the State Bar of Georgia;

IT IS CONSIDERED, ORDERED and ADJUDGED, that his name be stricken as a member of the legal profession in the State of Georgia.

SO ORDERED, this 26 day of June, 1978.

/s/ John F. Harding
SENIOR JUDGE
AUGUSTA JUDICIAL CIRCUIT

Filed in office this 26th day of June, 1978.

/s/ Vivian R. Martin
Deputy Clerk

APPENDIX B

IN THE SUPERIOR COURT OF
RICHMOND COUNTY
STATE OF GEORGIA

IN RE: BOBBY GAY BEAZLEY)
)
)

ORDER

[All references herein to "exhibits" are to the exhibits attached to the February 28, 1986 Objection of the State Bar of Georgia to Motion to Set Aside, unless otherwise noted.]

FINDINGS OF FACT

On June 22, 1978, movant, an attorney licensed to practice law in the State of Georgia, sent a 34-page document to the State Bar of Georgia entitled Report To The State Bar ("Report") (See Exhibit A). In addition to allegations of political corruption, mafia activities, and a communist conspiracy to overthrow the government of the United States of America, movant stated therein as follows:

> . . . considering all factors . . . I respectfully submit that except for finding counsel to take over [my pending cases] I am resigning from the legal profession and the practice of law; . . . (Report at page 34.)

Upon receipt of said Report, the State Bar of Georgia ("State Bar") sent a copy of the Report together with a document it drafted entitled Petition For Voluntary Withdrawal From The Practice of Law In The State

of Georgia ("Petition") (See Exhibit C) to the Honorable Edwin D. Fulcher, Superior Court Judge of the Augusta Judicial Circuit. Said Petition recited that pursuant to the movant's Report and his voluntary resignation therein, the State Bar had stricken his name from its membership rolls and prayed that the court issue an order likewise striking his name from membership in the State Bar of Georgia.

Although the State Bar maintains that a copy of this Petition was sent to the movant (see Exhibit B), the movant denies ever having received it (See Affidavit of Bobby G. Beazley attached to Movant's Response Brief). Without a formal hearing, the Honorable John F. Hardin, Senior Judge of the Augusta Judicial Circuit, signed an order dated June 26, 1978 striking movant's name as a member of the legal profession in the State of Georgia (See Exhibit C). Thus despite the fact that no disciplinary proceedings had been brought against him, movant was thereafter prohibited from practicing law.

On July 3, 1978, movant filed with the Supreme Court of Georgia his "extraordinary appeal" of the June 26, 1978 order (See Exhibit D-2). That appeal was denied without opinion on August 31, 1978 (See Exhibit D-1).

Thereafter, movant sought to regain his right to practice law in almost every conceivable forum, both state and federal. The State Bar was named as a defendant in several of these unsuccessful endeavors. This Court will not attempt to relate further the procedural history of this bizarre case. Suffice it to say that the movant, having not yet achieved his desired goal, now seeks to set aside the

June 26, 1978 order in the court of its rendition, the Superior Court of Richmond County. All judges of that court having recused themselves, the formidable task of sorting out this case has befallen this judge designate.

CONCLUSIONS OF LAW

Pursuant to O.C.G.A. § 9-11-60(d), movant seeks to set aside the June 26, 1978 order on two grounds: (1) lack of subject matter jurisdiction and (2) lack of personal jurisdiction. For the reasons stated below, this Court agrees that the Superior Court of Richmond County lacked both jurisdiction over the person and of the subject matter at the time the June 26, 1978 order was signed by Judge Hardin.

I. SUBJECT MATTER JURISDICTION

In *Carpenter v. State,* 250 Ga. 177 (1982), the Supreme Court of Georgia held that:

> Matters relating to the practice of law, including the admission of practitioners, their discipline, suspension, and removal, are within the inherent and exclusive power of the Supreme Court of Georgia. *Id.* at 177.

The *Carpenter* decision firmly established that the authority to discipline, suspend, disbar or otherwise remove attorneys once admitted to practice law rests exclusively with the Supreme Court of Georgia. Any attempt by the Legislature to confer that power upon inferior courts would be unconstitutional as violative of the separation of powers.

In aid of its exclusive jurisdiction, the Supreme Court adopted Rules and Regulations for the Organization and

Government of the State Bar of Georgia ("Rules"). (See 219 Ga. 873.) The Rules, as amended, existing at the time of the June 26, 1978 order are set out in 238 Ga. 739-853. Procedures are established therein for the disbarment of attorneys.

A judgment rendered by a court without jurisdiction of the subject matter is absolutely void. *Williams v. Fuller,* 244 Ga. 846, 848 (1979). In order for the June 26, 1978 order to be valid, some basis for the issuing court's jurisdiction must be shown. The question therefore is from what source did the Superior Court of Richmond County derive its authority to strike the movant's name from the legal profession in the State of Georgia?

The State Bar claims that it transmitted the movant's Report and its Petition to the Superior Court of Richmond County pursuant to Ga. Code Ann. § 9-501, the same statute held unconstitutional in *Carpenter,* supra. The State Bar maintains, however, that it looked only to the procedural provisions of § 9-501, and not its substantive provisions. Because § 9-501 established the superior court of the county of an attorney's residence as the proper venue for removal actions, the State Bar determined that such court was also the correct venue for acceptance of an attorney's resignation. (Transcript of January 30, 1986 hearing at 9, 23). The proper venue for the acceptance of an attorney's resignation becomes a moot point, however, if there is no substantive provision authorizing the acceptance of an attorney's resignation in the first place. The State Bar admits that it can cite no precedent for the mere acceptance of an attorney's voluntary resignation (Transcript January 30, 1986 hearing at 30). Obviously *Car-*

penter, supra, precludes the possibility that such authority might have been conferred by statute. Therefore, it must have been delegated by the Supreme Court in its Rules, if at all. This Court, however, can find no authority in the Rules which would have permitted the Superior Court of Richmond County to simply accept the movant's voluntary resignation, purportedly the intent of movant's 34-page Report.

The only instance found by this Court which would empower a superior court to remove an attorney is pursuant to Standard 66 (removal of an attorney convicted of a crime). Moreover, the only situation in which the rules permit a voluntary surrender of one's license is pursuant to a disciplinary proceeding following an admission by the attorney of conduct in violation of established disciplinary standards. Rule 4-203(i). Movant herein was neither convicted of a crime nor subjected to disciplinary proceedings.

Notwithstanding the Richmond County Superior Court's apparent lack of subject matter jurisdiction, it is contended that the Supreme Court of Georgia adopted the June 26, 1978 order, i.e., exercised its exclusive jurisdiction, when it denied movant's "extraordinary appeal" from said order. This Court does not agree. Movant contends, and the State Bar does not refute, that movant did not file a notice of appeal prior to submitting his "extraordinary appeal" to the Supreme Court. The proper and timely filing of a notice of appeal is an absolute prerequisite to confer jurisdiction upon the appellate court. *Hester v. State,* 242 Ga. 173, 175 (1978). The failure to file a notice of appeal is one of the statutory grounds for dismissal of an appeal. *Littlejohn v. Tower Associates, Ltd.,* 163 Ga. App. 37, 38 (1982); O.C.G.A. § 5-6-48(b)(1).

This Court will presume that the Supreme Court would not have considered the merits of movant's appeal in the absence of a properly filed notice of appeal. Consequently, this Court rejects any notion that the Supreme Court adopted the June 26, 1978 order as its own. This conclusion is supported by the language of a later Supreme Court decision discussed in Part IV, infra.

II. PERSONAL JURISDICTION

In the absence of service process or the waiver thereof, no jurisdiction over the defendant is obtained by the court and any judgment adverse to the defendant is absolutely void. *DeJarnette Supply Co. v. F.P. Plaza,* 229 Ga. 625(4) (1972). Notice and opportunity to be heard is the very bedrock of due process. *Lester v. Croombs,* 157 Ga. App. 377, 378 (1981). The right to practice law, after once admitted is to be considered a valuable property right, of which one is not to be deprived without notice and a right to be heard. *James v. State,* 61 Ga. App. 860, 863 (1940).

Movant claims that he received no notice nor opportunity to be heard prior to the issuance of the June 26, 1978 order. Although the State Bar maintains that it sent movant a copy of the Petition, this Court finds such insufficient to meet due process requirements for several reasons. One, movant apparently never received it. Movant's affidavit overcomes the presumption of receipt. *Henson v. State,* 168 Ga. App. 210 (1983). Moreover, in sending the copy by regular mail, the State Bar failed to select a method of service reasonably calculated to put movant on notice. Two, even if movant had received said copy, it would have been received at best only one or two days prior to the date on which the order was signed. This does not

constitute sufficient advance notice especially when no hearing date was set and no hearing held. And finally, if the State Bar relied on § 9-501 to determine the appropriate venue for its Petition, then the Superior Court of Richmond County, upon receipt of the Petition, should have been bound by the procedural mandate of § 9-509 to provide the movant with personal service of a copy of said Petition and notice of a hearing date thereon. Ga. Code Ann. § 9-509; *Garland v. State*, 110 Ga. App. 756, 759 (1964). This would be true even though this was not strictly speaking an action to disbar, because it was nonetheless an action in the nature of disbarment. *Bradley v. Simpson*, 59 Ga. App. 844, 845 (1939). Note in this regard that a voluntary surrender of one's license has been held to be the equivalent of disbarment. *Carpenter*, supra at 178.

Furthermore, this Court rejects the contention that movant was not entitled to notice because he initiated the resignation process which culminated in the signing of the June 26, 1978 order by Judge Hardin. One, the movant's "resignation" as expressed in his Report was clearly conditioned on his finding substitute counsel to represent his clients in pending cases, a condition which had not yet been satisfied. Two, the movant *clearly did not authorize* the State *Bar to draft and submit its Petition to Judge Hardin.*

III. MOTION TO SET ASIDE

A judgment void because of lack of jurisdiction over the person or subject matter may be attacked at any time. O.C.G.A. § 9-11-60(f). Although the order sought to be set aside is almost eight years old, a judgment rendered by a court without jurisdiction is a mere nullity, and may

be so held wherever and whenever and in whatever way it is sought to be used as a valid judgment. *Fricks v. Fricks*, 215 Ga. 137, 139 (1959); *Strickland v. Willingham*, 49 Ga. App. 355, 357-358 (1934). Laches and similar equitable defenses, which are peculiarly applicable to equitable suits, have no relevancy to the suit at bar involving a motion to set aside a judgment upon a legal ground. *Power v. Mobley*, 170 Ga. App. 167, 168 (1984); *Moore v. American Finance System*, 236 Ga. 610, 611 (1976).

IV. RES JUDICATA

The last issue to be addressed is whether or not any of the decisions rendered heretofore will operate as res judicata to this Court's reconsideration of the validity of the June 26, 1978 order. For the reasons stated below, this Court finds that res judicata is inapplicable to movant's motion to set aside.

In order for the doctrine of res judicata to apply, there are three prerequisites to which the situation must conform. They are: (1) identity of parties; (2) identity of cause of action, and (3) prior adjudication by a court of competent jurisdiction. *Firestone Tire & Rubber Co. v. Pinyan*, 155 Ga. App. 343, 345 (1980). One additional statutory requirement is that the prior adjudication must have been based on the merits of the cause of action alleged. O.C.G.A. § 9-12-42. This Court will now address each of the proceedings which have heretofore addressed the validity of the June 26, 1978 order in light of the foregoing res judicata prerequisites.

(1) The June 26, 1978 order itself cannot operate as a bar to this Court's reconsideration of its validity. A judg-

ment which is void for the want of jurisdiction does not afford any basis for applying the doctrine of res judicata. *Eagan v. First Nat. Bank,* 212 Ga. 212, 213 (1956).

(2) The August 31, 1978 denial by the Supreme Court of Georgia of movant's "extraordinary appeal" was entered without opinion. It is therefore a matter of speculation as to whether or not the merits of the appeal were addressed. Where a judgment creates doubt as to what issues were actually decided and leaves as a matter of conjecture the basis for such judgment, the judgment is not an estoppel, *Cravey v. Druggist's Co-Operative,* 66 Ga. App. 908, 914 (1942). Moreover, there is good reason to believe that the merits were not reached (see discussion in Part I, supra.).

(3) The movant brought suits against the State Bar in both the Superior Court of Fulton County (See Exhibit E-1) and the United States District Court for the Southern District of Georgia (See Exhibit F-1). In those suits the movant alleged, *inter alia,* that the State Bar had wrongfully removed movant from its membership and was unlawfully withholding movant's license to practice law. Movant sought damages and equitable relief. The validity of the June 26, 1978 order was raised in each suit although movant did not specifically seek to have that order set aside.

On October 20, 1980, the Fulton Superior Court granted summary judgment to the State Bar but the order did not specify the reasons therefor. (See Exhibit E-3). A transcript of the proceedings, however, indicates that the court believed the Supreme Court's denial of movant's "extraordinary appeal" was res judicata. That court also indicated that it believed that the movant stated no cause of

action, i.e., that the State Bar had no authority to re-admit him. (Fulton Superior Court hearing transcript at 11, 12 and 18). This decision was affirmed on appeal.

On March 14, 1983, the Southern District Court granted summary judgment to the State Bar in a written order which cited the Fulton County decision as res judicata to its reconsideration of the issues (See Exhibit F-19). This decision was also affirmed on appeal.

The principles of res judicata apply to questions of jurisdiction as well as to other issues, and where the jurisdiction of the court is challenged, and the question is contested and decided, a judgment of the court, unless reversed or set aside, is generally held as conclusive on the parties in subsequent litigation. 50 C.J.S. Judgments, § 714. Therefore, this Court finds that res judicata bars any subsequent suit between the movant and the State Bar on any cause of action arising from the beforementioned events. See generally, *Bowman v. Bowman*, 215 Ga. 560, 561 (1959).

Nonetheless, this Court finds that neither of these decisions operate as res judicata to its reconsideration here of the validity of the June 26, 1978 order because there is no identity of parties here. Res judicata can only be set up in a subsequent suit between the same parties. *Owens v. Williams*, 87 Ga. App. 238, 243 (1952). The case at bar is a motion to set aside an order rendered in an action styled In Re Bobby Gay Beazley. Strictly speaking, the State Bar is not a party to this action. This Court invited the State Bar's participation because of its extensive involvement in the history of this case and the fact that it held certain documents and transcripts from previous litigation not found in the record transmitted to this Court

(See letter dated November 13, 1985 from this Court to William P. Smith, III, General Counsel, State Bar of Georgia).

Identity of parties means that those who invoke the defense of res judicata as well as those against whom the defense is invoked must be the same. *A.R. Hudson Realty, Inc. v. Hood,* 151 Ga. App. 778, 779 (1979). This Court finds that the State Bar is not a party which may invoke the defense of res judicata. Moreover, this Court having concluded that res judicata would bar a subsequent suit between the movant and the State Bar, it appears that no res judicata purpose would be served by denying movant's right to bring this motion to set aside.

(4) The Petition for Admission to Bar filed by the movant in the Superior Court of Long County (See Exhibit F), and its denial and subsequent affirmance by the Supreme Court of Georgia (see Exhibit 6) did not address the validity of the June 26, 1978 order and consequently does not operate as res judicata here.

(5) Most telling of the decisions rendered heretofore is the June 20, 1985 decision of the Supreme Court of Georgia (See Exhibit G) responding to movant's petition for mandamus wherein movant sought an order directing the State Bar to re-issue his license (See Brief of Plaintiff). With the present motion to set aside pending in this Court, and briefs fully reciting all prior decisions affecting the issue (See Exhibit C to Objection of the State Bar of Georgia to Motion to Disqualify), the Supreme Court of Georgia stated as follows:

> This court hereby declines to exercise its original jurisdiction over the instant mandamus petition, [cits],

> *but does so without prejudice to the petitioner's right to seek relief by way of a motion to set aside in the* appropriate superior court in light of *Carpenter v. State*, 250 Ga. 177 (293 SE2d 16) (1982). (Emphasis added)

If the high court had been of the opinion that its prior decisions operated as a bar to reconsideration of the validity of the June 26, 1978 order, then why would it have added the underlined portion of its decision above?

Accordingly, this Court finds that the June 26, 1978 order was rendered by a court having no jurisdiction of the person or the subject matter; that said order is therefore a nullity; that said order is hereby set aside; that movant Bobby G. Beazley is hereby restored to his status as an attorney licensed to practice law in the State of Georgia conditioned only upon his payment to the State Bar of Georgia of whatever dues, or a prorated portion thereof, are owing for the current year. All persons or agencies involved in the licensing process are ordered to cooperate in effectuating this order.

SO ORDERED this 28 day of May, 1986.

/s/ Thomas W. Ridgway
Chief Judge Superior Courts
Alcovy Judicial Circuit

APPENDIX C

In the Supreme Court of Georgia

Decided: Nov. 25, 1986

43777. STATE BAR OF GEORGIA v. BEAZLEY.

GREGORY, Justice.

Bobby G. Beazley brought a motion to set aside a 1978 order striking his name from Georgia's roll of attorneys. The trial court granted the motion. We reverse.

On June 22, 1978, Beazley, then a practicing attorney, sent a 34-page document to the State Bar of Georgia. The document detailed what Beazley perceived as corruption in society. Beazley concluded the document by writing he was " . . . resigning from the legal profession and the practice of law. . . . "

Upon receipt of Beazley's document, the State Bar prepared a "Petition for Voluntary Withdrawal from the Practice of Law in the State of Georgia." With Beazley's document attached, the petition was sent to the Superior Court of Richmond County. The State Bar also contends it sent a copy by regular mail to Beazley, but Beazley denies receiving it.

On June 26, 1978, with no service of process on Beazley and without a hearing, a Richmond County Superior Court judge signed an order striking Beazley's name from Georgia's roll of attorneys. Beazley filed an "extraordinary appeal" from the order with this court on July 3, 1978. The appeal was denied on August 31, 1978.

In 1980, Beazley filed a complaint seeking damages and equitable relief in Fulton County Superior Court. The

court granted motions for summary judgment and judgment on the pleadings in favor of the State Bar on October 20, 1980. The judgment was affirmed without opinion by this court on April 30, 1981.

In 1982, a similar suit was filed in the U. S. District Court for the Southern District of Georgia in Brunswick. The State Bar's motion for summary judgment was granted on March 14, 1983. Beazley's appeal to the Fifth Circuit Court of Appeals was unsuccessful.

On January 22, 1984, Beazley filed a motion in Richmond County Superior Court to set aside the June 1978 order as void due to lack of personal and subject matter jurisdiction. The trial court granted the motion and ordered that Beazley be restored to his status as an attorney licensed to practice law in Georgia. The State Bar appeals this decision.

1. The State Bar contends the trial court erred by ruling res judicata was not a bar to Beazley's motion to set aside. We agree.

"A judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside." OCGA § 9-12-40. In order for the res judicata doctrine to apply, three prerequisites must be established: (1) identity of parties; (2) identity of the cause of action; and (3) prior adjudication by a court of competent jurisdiction. *Firestone Tire & Rubber Co.*, 155 Ga. App. 343, 345 (270 SE2d 883) (1980). Also, OCGA § 9-12-42 provides the merits of the case must have

been adjudicated for the judgment to be a bar to subsequent action.

In its order granting Beazley's motion to set aside, the trial court found that Beazley had raised the issue of the validity of the June 26, 1978 order in his suits before the Fulton County Superior Court and the U.S. District Court. The trial court concluded res judicata would thus bar Beazley's claims in a subsequent suit against the State Bar of Georgia.

However, the trial court found res judicata could not apply in this latest suit because of a lack of identity between the parties. The court found that the motion to set aside involved an action styled "In Re Bobby Gay Beazley" in which Beazley was the only party. The court held that "strictly speaking" the State Bar is not a party to this action, and thus not entitled to raise the doctrine of res judicata.

(a) We find the trial court erred in not ruling Beazley's action was barred by the doctrine of res judicata.

In his complaint filed in the U.S. District Court, Beazley raised the issues of subject matter jurisdiction and personal jurisdiction by the Richmond County Superior Court regarding its June 26, 1978 order. The district court granted a motion by the State Bar for summary judgment, concluding that the action was barred by res judicata resulting from the prior litigation in the Fulton County Superior Court.

In *National Heritage Corp. v. Mount Olive Memorial Gardens, Inc.*, 244 Ga. 240, 243 (260 SE2d 1) (1979), this court held that "where an order granting a summary

judgment in a prior suit is relied upon in final support of a plea of res judicata in a subsequent suit, the court considering the plea of res judicata should examine the underlying basis of the summary judgment. If that summary judgment actually was an adjudication on the merits (a plea in bar, or otherwise on the merits), the plea of res judicata should be sustained. However, if the examination shows that the summary judgment was not an adjudication on the merits (a dilatory plea, etc.), the res judicata should be denied."

The underlying basis of the U.S. District Court's decision was res judicata. A plea of res judicata is not a dilatory plea, but is in the nature of a plea in bar. *Galloway v. Merrill,* 213 Ga. 633, 634 (100 SE2d 443) (1957). Therefore, the prior adjudication in the district court stands as an adjudication on the merits for the purposes of OCGA §§ 9-12-41 and 9-12-42 and bars this instant action.

(b) We hold the trial court erred in finding the State Bar is not a party to this action capable of injecting the res judicata doctrine.

The term "party" to an action includes all who are directly interested in the subject matter, and who have a right to make defense, control the pleadings, examine and cross-examine witnesses, and appeal from the judgment. *Smith v. Gettinger,* 3 Ga. 140, 142 (1847). See also 67A CJS, Parties § 2, 639-640 (1978). Whether a person is a party to an action must be ascertained exclusively by inspection of the record. See 67A CJS, Parties § 3, 641 (1978); *Small v. Peacock,* 171 Ga. 475, 476 (155 SE2d 754) (Gilbert, J., dissenting) (1930).

The trial court stated in its order the State Bar was invited to participate because of its extensive past involvement with the case and its possession of certain documents and transcripts from previous litigation. From that point, the record discloses the State Bar acted and was treated as a party. It filed an answer, responses to Beazley's motions and motions of its own. It was ordered by rule nisi to appear at a hearing and show cause why Beazley's motion to set aside should not be granted. At the hearing, the State Bar introduced exhibits into evidence. The State Bar filed and proceeded with this appeal. All of these actions were undertaken without formal objection by Beazley.

We therefore hold the State Bar is a party in considering the res judicata effect here of previous litigation between the State Bar and Beazley.

2. Because we find this action is barred by res Judicata, we do not reach the issues of subject matter and personal jurisdiction raised in the trial court and presented on this appeal.

Judgment reversed. Marshall, C. J., Clarke, P. J., Smith, Weltner, Hunt, J. J. and Chief Judge Harold R. Banke concur. Bell, J., disqualified.

APPENDIX D

IN THE SUPREME COURT
STATE OF GEORGIA

Bobby G. Beazley — Action No. 43777

Movant

vs — MOTION FOR REHEARING

The State Bar of Georgia

Respondent-Appellant

COMES NOW, Bobby G. Beazley, who is the movant-appellee in the above entitled cause and files this his motion for rehearing in the above entitled cause and respectfully shows to this honorable court the following, to-wit:

1

That the court concluded that the complaint for damages movant filed in the Fulton County Superior Court and the resulting granting of respondent's motions constituted res judicata; however, movant shows that no such action existed in law and the presiding Judge was limited to dismissing the action for damages. See *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. wnd 695(2)(1986). In Matthews, it was pressly stated that when an order has been wrongfully secured, as was the case with movant, the only cause of action available to movant was the filing of a motion to set aside said order. The motion to set aside was filed and heard by Judge Ridgeway. All other actions filed thereto were nullities and void in law.

2

That action filed in the U.S. District Court for the Southern District of Georgia in Brunswick was also a nullity and not authorized in law with the only legitimate cause available to the presiding Judge that of dismissal. See *Matthews Group & Associates, Inc. v. Wages,* 180 Ga. App. 151, 348 S.E. 2nd 695 (2)(1986).

3

That the *Matthews Group & Associates, Inc. v. Wages* decision, supra, was released by the Georgia Court of Appeals subsequent to the developments in the case sub-judice; also, this decision leaves no doubt that the Fulton and Brunswick action were absolute nullities from which no legal ruling could originate other than one of dismissal.

4

That the court suggested on page 5 of its decision that the State Bar of Georgia was permitted to drop in as a party below because movant made no formal objection; however, the record below clearly discloses that a typewritten formal objection was made by movant and file with Judge Ridgeway on the ground that the State Bar of Georgia had no legal position in the case sub-judice.

5

That the court on page 1 of its decision admits that movant was not served with process or accorded a hearing prior to an order being entered by the Richmond County Superior Court; therefore, the court was limited to dismissing the petition for lack of jurisdiction. See *Gandy*

v. Brown, 173 Ga. App. 740, 327 S.E. 2nd 851 (1985). It is axiomatic that for res judicata to apply the ruling court must have had subject matter and personal jurisdiction.

6

That there existed absolutely no contradiction below of movant's assertion that he did in fact telephone the State Bar Office and advise an agent therein that the report was an effort to obtain an investigation and give the State Bar jurisdiction to conduct one and that this contact occurred prior to any action being taken on the report by employees of said office.

7

That the most fundamental right of every American is to have his day in court and to be heard prior to the entry of any ruling against his interest; moreover, millions of Americans have fought and many died to protect this principle. Further, if this right had been awarded movant and a hearing on the merits actually heard, it would have been disclosed that movant did not in fact sign the report which was actually signed by Mr. Joe Saxon (a combat veteran) using movant's name.

8

That since a member of the State Bar Association could not voluntarily resign at the time of entry of the complained about order of removal, all actions taken by the Richmond County Superior Court, Fulton Superior Court and the Brunswick U.S. District, trying to legalize such a phantom were nullities. See *State Bar Rule 1-202; see Matter of Ben S. Atkins,* 253, Ga. 319, 320 S.E. 2nd 147

(1)(1984); *See Carpenter v. State,* 250 Ga. 177, 293 S.E. 2nd 16(1982). All of these courts assumed power that only the Georgia Supreme Court had as pointed out in *Carpenter v. State, Supra.*

9

That on page 3 of its decision, the court held that O.C.G.A. S 9-12-42 provides the merits of a case must be adjudicated (heard) for the judgment to be a Bar to subsequent action. It is pointed out that the merits of the facts of the case sub-judice have never been heard and no witnesses sworn, testimony or evidence received. *Clearly, movant would have been the only witness absent Joe Saxon, as to why the document labeled "Report to the State Bar" was forwarded.*

10

(A) On page 3 of its decision, the court list four (4) prerequisites to be established before the principle res-judicata applies. Employee Elizabeth Anne Bloom stated before Judge Ridgeway that the State Bar of Georgia did not file the petition for withdrawal itself, but forwarded same on behalf of movant Bobby G. Beazley. This is borne out by the fact that the State Bar of Georgia's name does not appear on the petition and that under the State of the law, the State Bar had no authority to file such a petition in a Superior Court. See *State Bar Rule 1-202; Matter of Ben S. Atkins, Supra, Carpenter v. State, Supra.* Therefore, the conclusion is inescapable that the State Bar was not a party;

(B) Identity of the cause of action is not present as movant filed an action before Judge Ridgeway to set

aside for lack of personal jurisdiction and lack of subject matter jurisdiction and these were not presented to either former court; also, neither cause could have been presented as under Georgia law, only the court of rendition (Richmond Superior Court) could have set the complainted about order of removal aside in a direct proceeding. See *Peugler v. Glynn Cty. Fed. Emp. Credit Union*, 171 Ga. App. 9, 318 S.E. 2d 687(2) (1984). Therefore, under law, there was and could not have been an identity between the action filed before Judge Ridgeway and any of the former actions. For a collateral attack to have been brought, it would first have to be admitted that the removal order was void on its face which it was and is.

(C) There could not have been prior adjudication on the issue of resignation by a court of competent jurisdiction as one in movant's circumstance could not resign and walk-off if he had wanted to. See *State Bar Rule 1-202; Matter of Ben S. Atkins, Supra, and Carpenter v. State, Supra.*

(D) As above stated, the merits of why the report was forwarded, who forwarded it, etc. have *not been heard* as of this writing. Only legal technical rulings have been heard; moreover, exhaustive efforts have been made to avoid a hearing by those at the Bar who should be demanding a hearing.

11

Movant admits that the recent case of *Matthews Group & Associates, Inc. v. Wages, Supra,* would most likely bar any suit against anyone, or entity, for having

the void and illegal order of removal entered as that decision limited movant's only cause of action to one setting aside said order which the Honorable Thomas W. Ridgeway did in fact do.

12

That the court below found that movant did not authorize the subject petition for voluntary withdrawal to be filed and that finding was not to be disturbed unless clearly erroneous. See *O.C.G.A. S 9-11-52(a) (R-157).* Nowhere in the text of its November 25th decision did this court point out that this finding was erroneous.

13

That this court has not disputed movants assertion that the documents labeled "Extraordinary Appeal" was illegal and a nullity as no notice of appeal was filed in the Clerk's Office from the order of removal; therefore, the denial of this nullity could not have formed the basis of a res judicata defense in the Fulton County Superior Court proceedings. It is to be remembered that the Fulton County Court stated that it could not grant movant's relief as the denial of his extraordinary appeal by this court constituted res judicata. (T-19)

14

That this court ruled on page 6 of its November 25th decision:

> "Because we find this action is barred by res-judicata, we do not reach the issues of subject matter and personal jurisdiction raised in the trial court and present on this appeal."

It is axiomatic and needs no citations of authority beyond those presented in movant's brief to this court that since the Richmond County Superior Court did not have subject matter jurisdiction and did not have jurisdiction over movant's person, there is absolutely nothing the Fulton Superior Court or U.S. District Court could have said or done to correct those original defects. Further, since this court did not find Judge Ridgeway's finding of lack of subject matter jurisdiction and personal jurisdiction to be in error or flawed, the decision of the U.S. District Court or the Fulton County Superior Court could not be the basis any res judicata defense.

15

That a copy of this court's November 25th decision is attached hereto and by express reference made a copy of this motion.

Wherefore, movant prays that this his motion for reconsideration be considered, that a hearing be held, and that the November 25th order of this court be amended to uphold the order of the Honorable Thomas W. Ridgeway.

Respectfully submitted, this 2nd day of December, 1986.

/s/ Bobby G. Beazley

1557 Gordon Highway
Suite D
Augusta, Georgia 30906

APPENDIX E

February 2, 1987

Honorable Joline B. Williams, Clerk
Supreme Court
State of Georgia
State Judicial Building
Atlanta, Georgia 30334

Re: State Bar of Georgia vs. Beazley
Case No. 43777

Dear Ms. Williams:

May I respectfully inquire as to whether or not the court has acted on the motion for rehearing that I as appellee filed in the above entitled case.

Sincerely,

/s/ Bobby G. Beazley

Mr. Beazley:

Reconsideration was denied 12/18/86 and notice mailed to you on that date.

/s/ J. Williams